Supreme Court, U.S.
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No: 06-461

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Respondent,

vs.

JOSEPH O. SALADINO,

Petitioner,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

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November 24, 2006

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PETITION FOR REHEARING

Pursuant to Rule 44.1, Petitioner respectfully petitions this Court for rehearing.

I.

The principles upon which this Court has functioned for over 200+ years are the rule of law, the principles of law, and the honorable interpretation of the law which protects the rights of American Citizens from any attempts of the government to violate said rights.

While Petitioner agrees that a Writ of Certiorari is "not a matter of right but of judicial discretion", Petitioner's substantive rights to due process, property, liberty, cited violations of his substantive rights as protected by the Constitution and oaths of office to uphold the Constitution taken by the Judges of this Court and the Appellate Court, tend to lessen the discretionary nature of the Writ of Certiorari.

This Court in *Miranda vs. Arizona*, 384 U.S. 436 ruled:

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Therefore, the rights of American Citizens supersede any rules or legislation which might allegedly give this Court leave to deny a Citizen their substantive rights.

Petitioner's constitutionally protected rights to due process, to property and to liberty are not dependant upon the nature of the Writ of Certiorari filed by the Petitioner (or any other writ whether or not created by act of Congress), but rather his rights are dependent/protected by the nature of the Constitution and the laws of the United States and the nature of the Appellate Court and government's disregard/violations of said rights.

Petitioner has a high level of confidence in this Court and in its desire to follow the rule of law. However, if this Court refuses to address the issue of law so clearly spelled out in the subject Petition, there is risk of substantial

negative fallout from said refusal. For example, negative fallout could very well include:

1. Judges throughout the United States will determine from this Court's actions or omissions that the Courts can now freely ignore with impunity the clear mandates of the law when it comes to issues related to due process, liberty and income tax revenues;

2. The Department of Justice ("DOJ") can continue to unlawfully and with impunity prosecute Citizens under laws which have not been "expressly" extended by Congress to the several 50 union states ("several states") finding little resistance by the Courts its actions which unlawfully destroy thousands of American Citizens and their families each year. Therefore, the Courts will never order Respondent to prove jurisdiction once challenged by the Citizen—a direct violation of the Citizen's rights to due process;

3. American Citizens cannot possibly be constitutionally represented in Congress any longer since the laws which Congress makes can be ignored by the Judicial and Executive branches of our government with impunity and without remedy to the Citizens;

4. Respect for United States law (and law in general) will diminish as Citizens learn by experience that the Courts only follow the law when it suits them and the Courts will not follow the law when it comes to issues of due process and taxes related thereto. In other words, one's due process rights are guaranteed as long as it does not affect the Nation's revenue;

5. Citizens now must read the law written in plain English and speculate that what the English language clearly tells them the law means is not sufficient to prevent them from being arrested, convicted and incarcerated by the DOJ and the Courts which will not follow the rule of law and will not apply the law equally and without impartiality, which is their duty;

6. More importantly, this Nation will cease to be a land governed by the law but rather it will be governed by men and women who choose to ignore the law

when it suits them or when the issues involve any form of National revenue regardless of how said law affects the Citizen's rights. Can this country be ruled by money and the insatiable appetite of the government for unlimited amounts of the Citizen's property without lawful authority (See 4 USC § 72) and without regard to the Citizen's rights being violated in the process?

Petitioner's Rights Denied

If this Petition for Rehearing is denied, the following substantive rights will effectively be denied to Petitioner and countless other Americans:

1. The Appellate Court's complete silence regarding Petitioner's challenge to the United States District Court's ("USDC") and Respondent's jurisdiction has resulted in the Appellate Court's denial of Petitioner substantive rights to due process with impunity. Jurisdiction has been properly challenged by Petitioner and the Court ignored it completely! And without any explanation as to how Petitioner has misinterpreted the plain language of 4 USC § 72. That silence and omission gives rise to an equitable estoppel, because the Court's officers are "public officers" and fiduciaries of the public, and their silence is incompatible with their oath and their fiduciary duty as "public officers" charged with protecting the public.

2. 26 USC §§ 7402 and 7408[1] allegedly grants the Secretary authority for injunctive relief without Respondent ever having to prove that Congress has "expressly" authorized the Secretary to administer and enforce internal revenue laws ("Act") within the several states pursuant to 4 USC § 72. Section 72 is a codification of Petitioner's rights—regarding the limitations of government—as protected by the Constitu-

[1] Sections 7401 and 7408 authorize an injunction to the Secretary to enforce internal revenue laws against Petitioner only if Congress has "expressly" extended the authority of the Secretary and IRC §§ 6700, 6701, 7402 and 7408 to the several states by law. (See 4 USC § 72).

tion and yet, Petitioner cannot avail himself of said protection when it comes to issues even remotely related to taxes. Murders, rapists, and even child molester's rights can be protected by the Constitution and the Courts but Petitioner is completely without remedy and protection by the Courts instituted, in part, for the very purpose of protecting the Citizen's rights (due process and liberty being two of those rights).

3. Petitioner has a substantive right not to be punished on the basis of a secret jurisdiction that no one will talk about (See the Conclusion herein)! Neither this Court (to date), Respondent, the Appellate Courts, the district Courts nor a host of U.S. Attorneys or IRS Agents will talk about 4 USC § 72. Neither will they show one law by which Congress has "expressly" authorized the Secretary to Act in the several states pursuant to 4 USC § 72? Not only is this "secret" jurisdiction repugnant to the Constitution, it flies in the face of all moral decency which should be afforded to the "People" who granted these public servants the authority to occupy their offices of trust in the first place.

4. Petitioner has a right to have the *Hughes v. U.S.*, 953 F.2d 531, 542-43 (9th Cir. 1991)[2] opinion reviewed when it states, in error, that 4 USC § 72 does not "foreclose" the IRS from acting outside Washington, DC thereby contradicting the very purpose of 4 USC § 72 to limit where government offices can Act. 26 USC § 72 is about WHERE an office can exercise it authority NOT WHAT authority it can exercise.

5. Petitioner has the right to read and understand the law as written in plain English without being told that what he reads cannot possibly mean what the plainly stated law says when interpreted according to the strict rules of statutory construction. This is tantamount to the family sitting around the dinner table when Dad suddenly falls on the floor passed out drunk and Mom says, don't worry everything is alright! Is it

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[2] See Appendix C of the original petition.

the goal of American Jurisprudence to convince Americans that they don't know what they know? If the law cannot mean what it plainly says, how can Citizens exercise their right to order their lives according to the law and at the same time have some assurances that they will not be maliciously prosecuted for doing what the law clearly allows them to do or not to do?

6. The currency of this Court for over 200+ years has been consistent rulings rendered and its courage to reverse rulings which were inconsistent with the principles of law and the Constitution; once it was brought to the Court's attention. It is these consistent rulings of the Court that preserve its honor. When this Court consistently rules in 4 cases[3] that the term "any property" means all inclusively "all property", unless Congress specifically excludes certain property, and then, when it comes to tax related cases, it refuses to rule at all, then Petitioner's rights to due process have been grossly denied and violated leaving him with no recourse and with no protection afforded him by the Constitution and United States law. If a right is not protected by the Court of last resort, then does one effectively have that right? If this Court of last resort will not check said violations and rule on the merits of the issues as it relates to United States law which have not been reviewed by this Court or any Court since said laws were written, what institution of government is left to protect Petitioner's rights? To whom can Petitioner turn to help him understand why the plain language of the law does not mean what is says? To whom can Petitioner turn for the protection he has been guaranteed by the Constitution and United States law? Doesn't Petitioner have a substantive right for said protection by this Court when no other Court will

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[3] See *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989); *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v. Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002) citing *Gonzalez* and *Monsanto* in the original Petition.

protect said rights? **How is it that this Court can, through its unwillingness to deal with this violation of clearly written law, compel Petitioner to pay through taxation for protection that it refuses to render?**

7. The *Hughes* Court makes it appear that somehow 26 USC § 7621[4], "expressly" extends the authority of the office of Secretary to the several states and there is no evidence that the President, pursuant to 26 USC § 7621, has ever established internal revenue districts within the several states other than Customs Districts. Doesn't the American Citizen have a right to be told the truth and not be lied to by his government? Doesn't the Citizen have the right to know that there are no established internal revenue districts within the several states out of which the Secretary can lawfully administer and enforce internal revenue laws?

8. When Petitioner reads what this Court said in *Caha v. U.S.*, 152 US 211 that:

> "The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." (Emphasis added)

And then he reads 4 USC § 72 which states:

> "All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.",

is it unreasonable for Petitioner to conclude that Congress has NOT "expressly" authorized the Secretary to Act within the several states when over 40 U.S. Attorneys, a multitude of Federal District Judges and scores of IRS Agents have been asked for the law which so "expressly" extends the authority of the Secretary to the several states and NONE CAN PROVIDE EVEN

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[4] See Appendix B-5 of the original Petition.

ONE LAW? Doesn't Petitioner have the right to know the law which requires him to perform and isn't it a denial of Petitioner's right to due process for the Courts, U.S. Attorneys and IRS Agents to keep that information a secret? How can so many levels of the government keep said jurisdiction a secret and in so doing not be acting as an illegal R.I.C.O. Enterprise scheming together to fraudulently deny Petitioner and other Citizens their rights to due process, to property, and to liberty as protected by the Constitution?

9. The absence of judicial clarification[5] by the lower Courts and the Appellate Court's refusal, on two separate occasions, to decide the presence or absence of the law by which Congress has "expressly" granted leave to the Secretary to Act within the several states and the void for vagueness doctrine require and force Petitioner to speculate as to his duty with respect to the Secretary's authority within the several states pursuant to 26 USC and 4 USC § 72.[6] The consequences of said speculation, if Petitioner is wrong and the Courts refuse to correct his error and state what the law is, could result in criminal prosecution and prison for Petitioner (See the Conclusion herein), and untold damage to him and his family, when said damage could have been avoided by one Court addressing the issue and making public the "secret" jurisdiction or the lack thereof in accordance with the rule of law.

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[5] At no time have the lower courts addressed the issue of the Secretary's authority to Act in the several states, pursuant to 4 USC § 72.

[6] See *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("**No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids**") (citations omitted); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("**[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law**") (citations omitted).

Doesn't Petitioner have the right to enjoy this kind of liberty?

10. This Court has stated that Citizens like Petitioner have a right to judicial review when it appears that an agency of the government has exceeded the authority grant of Congress (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)) which stated "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress"; *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) providing that agency action "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review" and "Congress ultimately controls administrative agencies in the legislation that creates them".

11. It is the duty of this Court and Petitioner has the right to expect this Court to protect his rights. *Boyd v. U.S.*, 116 U.S. 616, 635 states that "...it is the duty of the courts to be watchful for the constitutional rights of the citizens, and against stealthy encroachment thereon." This duty, as articulated by the *Boyd* Court, means that Citizens have a right to have their Courts protect their rights; notwithstanding the nature of the subject Writ of Certiorari.

12. Doesn't a Citizen have the right to call upon the Courts and the Judges of said Courts to honor their oaths of office and defend the Constitution and the rights of the People as protected thereby?

Therefore, irrespective of the nature of the Writ of Certiorari as a writ of right, Petitioner's rights as protected by the Constitution and United States law are under attack and this Court is constitutionally mandated to protect Petitioner's rights and the rights of other Americans who's rights are being daily violated by an agency which cannot prove, by admissible evidence in the record, that Congress has "expressly" authorized the Secretary to Act within the several states pursuant to 4 USC § 72.

Finally, there is evidence that Congress does indeed follow the mandates of 4 USC § 72 even in territories or insular possessions over which it has exclusive legislative jurisdiction. For example, Petitioner cites examples of how Congress does "expressly" authorize the Secretary to Act in other areas outside "the District of Columbia, and not elsewhere" in United States law:

> 48 USC § 1397. Income tax laws of United States in force; payment of proceeds; levy of surtax on all taxpayers
>
> "**The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States**, except that..."

and

> 48 USC § 1421i. Income tax
>
> Applicability of Federal laws; separate tax
>
> "**The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam**: Provided..."

and

> 48 USC § 1801. Approval of **Covenant to Establish Commonwealth of Northern Mariana Islands**
>
> "That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows [note to this section], **is hereby approved**."

and said Covenant which was approved by Congress states in part:

> "Article VI
>
> "revenue and taxation
>
> "Section 601. (a) **The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax...in the same manner as those laws are in force in Guam**."

Under the NOTES under References in Text it states:

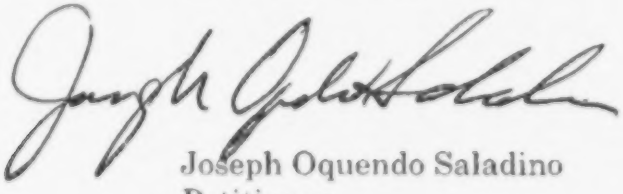
"The income-tax laws in force in the United States of America, referred to in text, are classified to **Title 26, Internal Revenue Code**."

CONCLUSION

As this Court receives this Petition, Respondent is seeking to indict Petitioner with regard to laws Congress has not "expressly" extended to the several states. The issues herein and in the subject Petition are vital to Petitioner's protection from Respondent's lack of lawful authority in the several states. Unless this Court intervenes, a great injustice will be perpetrated against Petitioner and other American Citizens under color of law within the several states; a geographical area over which Congress has NOT "expressly" authorized the Secretary to Act pursuant to 4 USC § 72.

With the deepest respect and highest regard for the honorable institution of this Supreme Court of the United States and the duty it has as a Court of last resort to protect the substantive rights of this Petitioner; and for the reasons set forth herein and in the subject Writ of Certiorari, Petitioner urges this Court to grant this Petition for rehearing and to vacate the October 30, 2006 denial of the subject Writ of Certiorari.

Respectfully submitted,

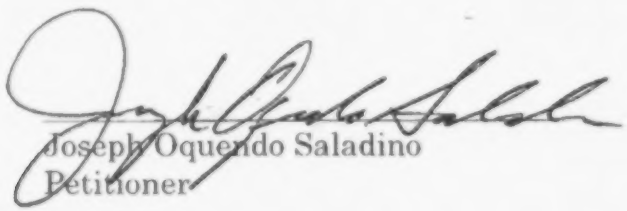


Joseph Oquendo Saladino
Petitioner

CERTIFICATE OF PETITIONER

I hereby certify that:

- The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.
- The Petition is presented in good faith and not for delay.



Joseph Oquendo Saladino
Petitioner